



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 220113-0014]

RIN 0648- BK72

**Pacific Island Fisheries; Annual Catch Limit and
Accountability Measures; Main Hawaiian Islands Deep 7
Bottomfish for Fishing Years 2021-2024**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, NMFS implements an annual catch limit (ACL) of 492,000 lb (223,167 kg) for Deep 7 bottomfish in the main Hawaiian Islands (MHI) for each of the three fishing years 2021-22, 2022-23, and 2023-24. As an in-season accountability measure (AM), if NMFS projects that the fishery will reach the ACL in any given fishing year, we would close the commercial and non-commercial fisheries in Federal waters for the remainder of the fishing year. As a post-season AM, if NMFS determines that the catch exceeded the ACL in a fishing year, we would reduce the ACL for the following fishing year by the amount of the overage. This rule supports the long-term sustainability of Deep 7 bottomfish.

DATES: The final rule is effective [*insert date 30 days after date of publication in the **FEDERAL REGISTER***].

ADDRESSES: Copies of the Fishery Ecosystem Plan for the Hawaii Archipelago (FEP) are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel. 808-522-8220, fax 808-522-8226, or www.wpcouncil.org.

Copies of the environmental analyses and other supporting documents for this action are available from <https://www.regulations.gov/docket/NOAA-NMFS-2021-0077>, or from Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd. Bldg. 176, Honolulu, HI 96818.

FOR FURTHER INFORMATION CONTACT: Brett Schumacher, NMFS PIRO Sustainable Fisheries, 808-725-5185.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Deep 7 bottomfish fishery in Federal waters around Hawaii under the FEP, as authorized by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Deep 7 bottomfish are lehi (*Aphareus rutilans*), ehu (*Etelis carbunculus*), onaga (*E. coruscans*), opakapaka (*Pristipomoides filamentosus*), kalekale (*P. sieboldii*), gindai (*P. zonatus*), and hapuupuu (*Hyporthodus quernus*). The FEP contains a process for the Council and NMFS to specify ACLs and AMs; that process is codified at 50 CFR 665.4 and requires NMFS to specify an ACL for MHI Deep 7

bottomfish each fishing year, based on a recommendation from the Council.

The Council recommended that NMFS implement the ACL of 492,000 lb (223,167 kg) and AMs for MHI Deep 7 bottomfish in fishing years 2021-22, 2022-23, and 2023-24. Each fishing year begins on September 1 and ends on August 31 of the following year. As an in-season AM, if NMFS projects that the fishery will reach the ACL, we would close commercial and non-commercial fishing for MHI Deep 7 bottomfish in Federal waters for the remainder of the fishing year. As a post-season AM, in the event that NMFS determines that the final MHI Deep 7 bottomfish catch exceeds the ACL in any given year, NMFS would reduce the ACL for the subsequent fishing year by the amount of the overage with a subsequent rulemaking. The Council recommended the ACL and AMs based on an updated 2021 bottomfish stock assessment, and in consideration of the risk of overfishing, past fishery performance, and the acceptable biological catch recommendation from its Scientific and Statistical Committee, with opportunity for input from the public.

You may find additional background information on this action in the preamble to the proposed rule published on November 1, 2021 (86 FR 60194).

Comments and Response

On November 1, 2021, NMFS published a proposed rule, Supplemental Environmental Assessment (SEA), and Regulatory Impact Review for public comment (86 FR 60194). The comment period ended November 16, 2021. NMFS received comments from 26 sources, primarily from students from a policy class, and the interested public. NMFS did not receive any comments from fishermen, fishery management agencies, or non-governmental organizations. We summarized the comments that relate directly to this action, and respond below.

Comment 1: This regulation is necessary and important for preventing overfishing in Hawaii and for protecting fish populations. With effective quotas and AMs, we will be able to protect our fish and continue to harvest them sustainably.

Response: NMFS agrees and will continue to regulate Federal fisheries to ensure they are sustainable, consistent with the Magnuson-Stevens Act, the FEP and implementing regulations.

Comment 2: NMFS should provide additional clarity on the purpose of this action because it mentions that it probably will not affect fishing behavior, and only extends for a few years into the future.

Response: The Magnuson-Stevens Act requires NMFS to implement ACLs for all federally managed fisheries with certain exceptions not applicable here. This rule implements ACLs for three years because that timeframe is

consistent with available scientific information and management goals of the Council. It provides a science-based upper limit for what can be caught sustainably, does not unnecessarily burden a healthy and productive fishery with regulatory constraints, and is consistent with regulatory requirements to set an ACL for federally-managed fisheries.

Comment 3: The assumption that catch will be identical over three years may be flawed, so NMFS should reassess the quota each year based on new stock assessments and adjust the quota if the new assessment indicates the need.

Response: The assumption that catch does not change annually is used as a basis for determining the acceptable risk of overfishing within the timeframe of catch projections from the most recent stock assessment. This provides an upper limit of the expected annual catch, and the in-season AM ensures that overfishing will not occur. It is unnecessary to conduct a new stock assessment and change the ACL each year because the post-season AM allows NMFS to decrease the ACL for the following fishing year to prevent effects on the stock, if needed.

Comment 4: The bottomfish catch fell from an average of 274,000 lb (124,284 kg) in 2014-15, 2015-16, and 2016-17 to 161,437 lb (73,227 kg) in 2019-20, so the population must be decreasing.

Response: Total catch does not correlate to the size of the population. Total catch is driven by several factors (such as market demand, which dropped sharply in 2020 during the coronavirus pandemic). The key metric used in stock assessments to evaluate relative population size is "catch per unit effort," which has been stable or increasing in recent years; this underscores that the stock is healthy and the fishery is sustainable.

Comment 5: Population sampling methodologies are flawed because the effect they are having on the overall environment goes unacknowledged, so the stock assessment is not accurate.

Response: This action is based on a 2021 updated stock assessment that included both fishery dependent data from commercial reports, and fishery independent data from scientific surveys. The assessment was reviewed by an independent panel of experts in fishery stock assessments and by the Council's Scientific and Statistical Committee. These reviews and our own internal review determined that the stock assessment provides the best available scientific information for management, and demonstrates the stock is not overfished or experiencing overfishing. The 2019 Environmental Assessment (EA) and 2021 SEA provide comprehensive analyses of the action's potential environmental effects, which NMFS determined would not be significant.

Comment 6: Fishermen may not report their catch accurately if the fishery approaches the catch limit, so there should be measures in place to make sure that data are reported accurately and ensure that catch does not pass the quota.

Response: While an impending catch limit could present a disincentive to report accurately, we work with our management partners at the Council and the State of Hawaii to educate fisherman about the importance of timely and accurate reporting. In past years when catch limits were lower, the fishery did reach the catch limits and NMFS closed the fishery using the same reporting and monitoring mechanisms, which indicates that underreporting is not a significant problem. The State of Hawaii also collects catch data from commercial fishermen and from vendors who buy and sell the fish. These programs allow for cross-verification of catch reports, if necessary, to ensure that management is based on consistent, timely, and accurate information.

Comment 7: NMFS should conduct an independent review to account for underreporting and adjust the ACL accordingly.

Response: We addressed this issue in a 2011 evaluation of unreported catch in the fishery. The information was included in the 2021 stock assessment to account for the effects of total fishery removals on the stock complex, and

catch projections for the ACL are scaled based on reported catch.

Comment 8: NMFS should consider creating different ACLs for small or local fisheries versus commercial fisheries to promote equity.

Response: Catches in the fishery have been considerably less than the ACL, so the regulations do not create access, equity, or allocation issues. ACLs for multiple sectors are not necessary because this fishery does not have distinct small, local, or large, non-local commercial sectors. All participants are small boat fishermen and are considered small operations from an economic standpoint.

Comment 9: Accounting for cultural, nutritional, and economic importance of Deep 7 bottomfish to indigenous Hawaiians is important because they are a marginalized population within Hawaii.

Response: NMFS and the Council address these concerns during the development of the ACL recommendation and the analysis in the EA and SEA. Social and cultural impacts are discussed and evaluated during the "Social, Economic, Ecological, and Management" analysis used to develop the ACL. Effects on fishing-dependent communities are further analyzed in the EA and SEA, and NMFS also considers effects on Native Hawaiian and other underserved communities pursuant to Executive Order 12898 on Environmental Justice.

These analyses show that this management action will not limit fishing opportunities for Native Hawaiians, minorities, or low-income populations, or otherwise have adverse effects.

Comment 10: NMFS should provide exceptions to the ACL for the native groups that have sustainably caught and used these fish for generations.

Response: Because the ACL is not restricting access to the fishery by any user group, the Council has not identified a need to allocate a portion of the ACL to any sector, including indigenous fishery participants.

Comment 11: NMFS should provide data that show what proportion these fish contribute to an individual's total annual income.

Response: NMFS included additional available information in the final SEA. There is a relatively small proportion of "highliners," about 10 percent of the commercial fisherman who catch over 1,000 lb (454 kg) of bottomfish per year. Within this group, participants earn approximately 30 percent of their personal income from bottomfish fishing, on average. Most other commercial fishermen report that they earn "very little" personal income from bottomfish.

Comment 12: The action seems overly focused on economic prosperity rather than the long-term sustainability of the ecosystem.

Response: The foundation of the ACL designation process is stock sustainability. NMFS first conducts a stock assessment to evaluate if the stock is being fished sustainably, and the overfishing risk across a range of catch levels. We then evaluate several sustainable catch levels for ecosystem effects (e.g., on target and non-target stocks, endangered species and marine mammals, habitat), and effects on the human community (e.g., economic, social, cultural effects). Economic factors are one of several important considerations, but our analyses address a comprehensive suite of concerns and perspectives.

Changes from the Proposed Rule

This final rule contains a minor housekeeping correction to the proposed rule. In the proposed rule published November 1, 2021 (86 FR 60194), we intended to insert a new provision at 50 CFR 665.211(e) and change the current 665.211(e) to 665.211(f). The current 665.211(e) addresses bottomfish fishing in areas outside the MHI. The new 665.211(e) addresses overage adjustments in the MHI Deep 7 bottomfish fishery. The amendatory instructions to change the CFR in the proposed rule would have added the new 665.211(e), but inadvertently omitted the new 665.211(f), and the language in this final rule corrects

this. The technical change has no material effect on management of the MHI Deep 7 bottomfish fishery.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the FEP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. NMFS received no comments regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 665

Accountability measures, Annual catch limits, Bottomfish, Fishing, Hawaii, Pacific Islands.

Dated: January 13, 2022.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory

Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends
50 CFR part 665 as follows:

PART 665 – FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for 50 CFR part 665
continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 665.211, revise paragraphs (a) and (e), and
add paragraph (f) to read as follows:

§ 665.211 Annual Catch Limit (ACL).

(a) In accordance with § 665.4, the ACLs for MHI
bottomfish fisheries for each fishing year are as follows:

Fishery	2021-22 ACL (1b)	2022-23 ACL (1b)	2023-24 ACL (1b)
Deep 7 bottomfish	492,000	492,000	492,000

Fishery	2019 ACL (1b)	2020 ACL (1b)	2021 ACL (1b)
Uku	127,205	127,205	127,205

* * * * *

(e) If landings of MHI Deep 7 bottomfish exceed the
specified ACL in a fishing year, the Regional Administrator

will reduce the ACL for the subsequent year by the amount of the overage in a separate rulemaking.

(f) Fishing for, and the resultant possession or sale of, any bottomfish MUS by vessels legally registered to Mau Zone, Ho'omalu Zone, or PRIA bottomfish fishing permits and conducted in compliance with all other laws and regulations, is exempted from this section.

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